

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 1-3-2005

CORAM:

THE HONOURABLE MR. JUSTICE V. KANAGARAJ

W.P.No.10984 of 1996

S. Soundararajan

... Petitioner

Vs.

1. Director of Elementary Education  
Madras - 6

2. Chief Educational Officer  
Trichy.

3. District Elementary Educational  
Officer, Trichy.

4. Assistant Educational Officer  
Veppur,  
Perambalur Thiruvalluvar District.

5. The Correspondent,  
Dhanalakshmi Aided Elementary School,  
Killiyur Village,  
Perambalur Taluk & District.  
Respondents. ...

(R5 impleaded as per order of this Court  
dt.19-04-2002 in WMP.No.21256 of 2000)

Prayer :: Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents to pay the salary to the petitioner for the period from 04-07-1991 to 17-03-1996 with interest.

For petitioner :: Mr. S. Mani

For respondents:: Mr. V. Velumani

Additional Government Pleader For RR1to4  
:: Mr. R. Singaravelan --For R5

\*\*\*\*\*

## O R D E R

The case of the writ petitioner is that he was appointed as a Secondary Grade Assistant with the fifth respondent-School on 12-09-1990. After Summer holidays, the School was reopened on 01-07-1991 and the fifth respondent prevented the petitioner from attending the School on the ground that the petitioner had submitted his resignation. As against the oral prevention, the petitioner filed W.P.No.9459 of 1991 before this Court wherein he was directed to file an appeal before the second respondent. The appeal was allowed on 27-09-1991 and the second respondent directed the 5<sup>th</sup> respondent to reinstate the petitioner in service; that the Management filed W.P.No.14623 of 1991 against the order passed in the appeal, which was allowed and remitted back to the second respondent for a fresh consideration on the ground that no opportunity was given to the Management to put forth its contentions; that the second respondent allowed the appeal by his order dated 06-08-1992 directing the Management to reinstate the petitioner; that the Management filed a suit, in O.S.No.690 of 1992 against the order of the second respondent, which was dismissed on 28-03-1994; that in the meanwhile, W.P.No.9472 of 1992 was filed by the petitioner before this Court, which was dismissed directing the petitioner to raise all his pleas before the Civil Court; that the petitioner filed W.P.No.14894 of 1994 praying for reinstatement and this Court disposed of this writ petition directing the second respondent to consider and pass orders in the revision petition, if any, filed by the Management before taking any action pursuant to the order of reinstatement dated 06-08-1992; that against this, a Writ Appeal No.1129 of 1995 was filed by the petitioner wherein the Division Bench of this Court by its order dated 18-01-1996 directed the Management to reinstate the petitioner on or before 29-02-1996 in default of which the post should be transferred along with the petitioner; that as the Management did not reinstate the petitioner, the Authorities transferred the petitioner along with the post to Chidambaram Middle School, Chinnavenmani, Periyavenmani Post by the proceedings of the District Elementary Educational Officer, Trichy dated 06-03-1996; that the petitioner joined the Chidambaram Middle School on 18-03-1996 and made a representation dated 22-06-1996 to the Authorities for payment of salary which was not paid due to no fault on his part, during the period from 06-08-1992, the date on which the appeal was allowed by the second respondent; that since no action was taken on the representation made by the petitioner, the petitioner has filed this writ petition praying for the payment of back wages for the period from 01-07-1991 to 17-03-1996 which was not paid to him.

2. The learned counsel for the petitioner would submit that the petitioner was put to great hardship for no fault on his part and the petitioner is very sincere, devoted and duty-bound to his profession and such a person should not be deprived of from what he is rightly entitled to; that the learned counsel relied on the following judgments to support his case that the petitioner was transferred along with his post and is entitled to full salary with backwages for the period he suffered from removal of service for no fault on his part.

The learned counsel would also cite the following decisions:

(1) S. SOUNDARARAJAN V. THE DIRECTOR OF SCHOOL EDUCATION, MADRAS (1996 I CTC 275)

In this judgment the Division Bench of this Court has held:

"If the third respondent does not comply with the above direction, the first respondent is directed to withdraw the sanctioned post which was held by the appellant, from the third respondent school, and allot the same to some other Government School where there is a vacancy and appoint the appellant in such a school where there is a vacancy along with the post. The first respondent should undertake this exercise if the appellant is not reinstated by the third respondent on or before 29.2.1996 and complete the exercise on or before 31.3.1996."

(2) In K. MUTHU V. THE PRESIDING OFFICER, LABOUR COURT, TRICHY (2005 I MLJ 143) this Court held as follows:

"The second respondent is directed to reinstate the petitioner forthwith with all his backwages and attendant benefits and with continuity of service as though he has been serving in the second respondent Management all these days continuously from the date of his appointment till date."

3. The learned counsel appearing for the respondents 1 to 4 would submit that only after careful consideration of the materials placed on record the Authorities have ordered reinstatement of service of the petitioner by transferring the post to another School along with him and the delay that has occurred was only due to the negligence on the part of the fifth respondent-School. Hence the respondents 1 to 4 are not liable to pay the salary entitled to the petitioner and it is only the Management that is responsible to pay the back-wages.

4. On the contrary the learned counsel appearing for the fifth respondent- Management on the other hand would strenuously

object to the averments made on behalf of the petitioner and would submit that the petitioner submitted his resignation letter dated 17-05-1991 and only after careful consideration of the same by the authorities as per Rule 17-A of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, the petitioner was terminated from service. Reference was made to the letter from the District Educational Officer which reads as follows:

"... இடை நிலை ஆசிரியராக பணிபுரியும் திரு.என். சௌந்தரராஜன் என்பவர் தனது குடும்ப சூழ்நிலை காரணமாகவும், சொந்த விருப்பத்தின் பேரிலும் தனது பணியினை 30.6.91-ல் இராஜினாமா செய்ய இதன் மூலம் அனுமதி வழங்கப்படுகிறது"

He further submitted that as the petitioner found himself to be placed in a better position with future prospects, he has approached this Court by way of several writ petitions and got transferred the post itself from the School, which is a loss to the Management but not for the petitioner, who is now employed in a Government School.

5. The learned counsel relied on the judgment of the Supreme Court reported in 1996 11 SCC 112(UNION OF INDIA V. PUNNILAL) to show that the employee, who filed a suit seeking a declaration for his entitlement to promotion but did not seek in that suit the consequential relief of back wages and consequently obtained the declaration for promotion which became final, stood barred from claiming the relief of back wages. It is the case of the fifth respondent that the petitioner had not impleaded the fifth respondent in the first instance and only after a period of four years he has impleaded the fifth respondent as a party, which would itself prove the conduct of the petitioner.

6. The learned counsel for the fifth respondent would contend that the Management is ready to pay the back wages if the respondents 1 to 4 are ready to pay the petitioner and it could not be forced to pay the petitioner since only after the careful consideration and acceptance of the respondents 1 to 4, the petitioner was evicted from service and would seek for the dismissal of the writ petition.

7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner and the learned Additional Government Pleader for respondents 1 to 4 and the learned counsel for the fifth respondent Management as well, what this Court is able to assess is that the petitioner was appointed as Secondary Grade Assistant with the fifth respondent Management on 12.9.1990; that after summer holidays, in the year 1991, according to the

petitioner, he was prevented by the fifth respondent from attending the duties on ground that he had submitted his resignation: As against the said denial of employment, the petitioner has filed W.P.No.9459 of 1991 wherein this Court, by order dated 18.7.1991 has directed the petitioner to prefer appeal before the second respondent, pursuant to which the petitioner preferred an appeal before the second respondent, who by his order dated 27.9.1991 has directed the fifth respondent Management to reinstate the petitioner, but without complying with the said direction of the second respondent, the fifth respondent Management has filed a W.P.No.14623 of 1991 which was allowed by this Court and the subject matter was remitted back to the second respondent for fresh consideration and the second respondent by his order dated 6.8.1992 has allowed the appeal preferred by the petitioner and directed the fifth respondent Management to reinstate the petitioner; that aggrieved, the fifth respondent Management has filed a suit in O.S.No.690 of 1992 before the Court of Subordinate Judge, Trichy praying to declare that the order passed by the second respondent is null and void and to restrain the second respondent herein from implementing the said order; that the said suit was dismissed on 28.3.1994.

8. It further comes to be known that even after the dismissal of the said suit, the Management did not comply with the directions of the second respondent and hence the petitioner has filed W.P.No.14894 of 1994 seeking a direction to the Management to reinstate him in service or in the alternative to re-deploy him in some other Government School, if necessary recalling the post from the fifth respondent Management wherein this Court by the order dated 8.9.1995, has disposed of the said writ petition with an observation that 'if any revision as against the order passed by the second respondent dated 6.8.1992 is pending, it shall be disposed of in accordance with law and on merits and if no such revision has been filed, the authorities may take action in accordance with G.O.Ms.No.1664 dated 4.9.1978 and to transfer the petitioner to any other school along with the post'; that as against the above order, the petitioner preferred Writ Appeal No.1129 of 1995 and a Division Bench of this Court by judgment dated 18.1.1996 has allowed the writ appeal thereby directing the fifth respondent Management to reinstate the petitioner on or before 29.2.1996, failing which the post held by the petitioner should be transferred to some other school along with the post; that since the fifth respondent Management has not complied with the directions of the Division Bench of this court, the authorities i.e. the respondents 1 to 4 transferred the petitioner along with his post to Chidambaram Middle School, Chinnavenmani, by proceedings dated 6.3.1996 and the petitioner joined the duty on 18.3.1996; that since the petitioner was denied of employment by the fifth respondent Management, the petitioner has submitted a representation on 22.6.1996 to the authorities for payment of his

salary during the period he was denied employment by the Management and since no orders have been passed on his representation, the petitioner has now come forward to file this representation praying for wages from 1.7.1991 to 17.3.1996.

9. The stand point of the fifth respondent Management is that the petitioner resigned from his post at volition on 17.5.1991 and the same was approved by the third respondent on 12.6.1991 which was also entered into his Service Register on 2.7.1991 and therefore the petitioner is not entitled for the relief sought for.

10. But, this stand of the fifth respondent Management has been dealt with by the second respondent in his enquiry conducted. On a thorough enquiry conducted into all the aspects of the subject matter, the second respondent has found that the alleged resignation letter projected and relied on by the fifth respondent Management has been cooked up and concocted by the fifth respondent by making use of the signatures obtained from the petitioner in the blank papers at the time of his entering into the services of the fifth respondent Management as against the well established principles of Rule 17A of the Tamil Nadu Recognised Private Schools (Regulation) Rules 1974 which mandates that the 'educational agencies not to obtain compulsorily resignation letter either at the time of appointment or subsequently from the employees in their school'. This order of the second respondent was affirmed till the stage of Writ Appeal by this Court and has become final, thus holding the petitioner eligible for reinstatement and finding the fifth respondent Management guilty of its highhandedness. In these circumstances, it is but natural that the petitioner becomes entitled to the relief sought for. For no fault committed on the part of the petitioner, the fifth respondent Management has dragging the petitioner from pillar to post all these years by initiating vexatious proceedings one after another thus betraying the petitioner from enjoying his due and hence this court is of the firm view that the petitioner becomes entitled to the relief sought for.

11. In these circumstances, the argument advanced on the part of the fifth respondent Management that they are ready to pay the wages to the petitioner, if the respondents 1 to 4 award the grant in their favour cannot also be accepted since no fault has been committed on their part flouting the statutory provisions of law and therefore the respondents 1 to 4 cannot be burdened and hence the following order:

In result,

(i) the above writ petition succeeds and the same is allowed.

(ii) The fifth respondent is directed to pay the salary and other emoluments to the petitioner for the period from 4.7.1991 to 17.3.1996 within a period of three months from the date of receipt of a copy of this order.

However, in the circumstances of the case, there shall be no order as to costs.

Sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

glp/gr.

To

1. The Director of Elementary Education, Madras - 6
2. The Chief Educational Officer, Trichy.
3. The District Elementary Educational Officer, Trichy.
4. The Assistant Educational Officer, Veppur, Perambalur Thiruvalluvar District.
5. The Correspondent, Dhanalakshmi Aided Elementary School, Killiyur Village, Perambalur Taluk and District.

+ 1 CC to Mr.S.Mani, Advocate SR NO 9503

+ 1 CC to Mr.R.Singaravelan, Advocate SR NO 9592

W.P.No.10984 of 1996  
1.3.2005.

gg(co)

gp/9.3.

सत्यमेव जयते

WEB COPY